

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 11/5/2003

ITEM NO. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT **Rafi Residence**

REQUEST Request to approve variance from Zoning Ordinance Article VI. Section 6.1070.G.1.i., for a 1+/- acre parcel located at 10201 N 124th Street with Single Family Residential, Environmentally Sensitive Lands (R1-43, ESL) zoning.

9-BA-2003

APPLICANT /OWNER
CONTACT

Mike & Tara Rafi
480-860-8555

LOCATION

10201 N 124th St

CODE ENFORCEMENT
ACTIVITY

The property was issued a notice of violation on March 27, 2003 by the City Code Enforcement Officer stating the City's Zoning Ordinance prohibits non-indigenous plants that are not within an enclosed yard area that have the potential to exceed 20 feet in height in the ESL district, which this home is located in. The palm trees in question do not meet this criteria and conflict with this provision of the Zoning Ordinance.

PUBLIC COMMENT

The applicant submitted a petition of 10 names plus 2 additional letters from persons residing in the general vicinity who support the variance to allow the palm trees to remain on the site. Staff has received no phone calls or correspondence regarding this case.

ZONE

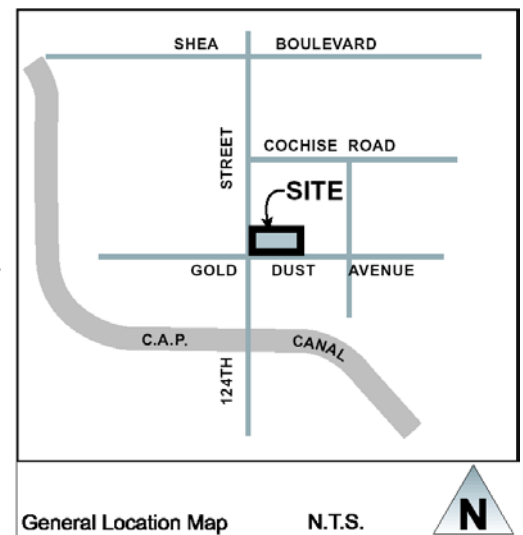
The site is zoned Single Family Residential District, Environmentally Sensitive Lands (R1-43 ESL).

ZONING/DEVELOPMENT
CONTEXT

The surrounding area is also zoned R1-43 ESL and is comprised of primarily single-family residences.

ORDINANCE
REQUIREMENTS

The zoning ordinance, Article VI, Section 6.1070.G.1.i states, "Plant materials that are not indigenous to the ESL area shall be limited to enclosed yard areas and non-indigenous plants that have the potential of exceeding 20 feet in height are prohibited."



DISCUSSION

The appellant indicates that prior to commencing the landscaping for her new home, she contacted the City of Scottsdale to inquire about landscape requirements. She indicates that City staff advised her that the only restriction was that there was to be no grass. The applicant inquired about the need to submit landscape plans to the City and was informed that, as a residential property, the submittal of landscaping plans was not required.

The appellant subsequently contacted a landscape company and hired them to install 9 palm trees. The trees were placed in the front yard of the site. Also, the applicant states that the landscape company that installed the palm trees was not aware of the requirements for non-indigenous plant materials in the ESL area. The landscape company advised the appellant that the palm trees had to be a certain height and placed to avoid roof clearance issues.

The palm trees were installed and the appellant was not aware of any violation until contacted by the Code Enforcement Officer of the violation with the City Zoning Officer.

Staff again notes that the palm trees in question conflict with this provision of the Zoning Ordinance.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The appellant indicates that there are numerous other residences in this vicinity containing non-indigenous plants, including palm trees that exceed 20 feet in height. Staff notes that some of the other homes with palm trees may have been developed prior to the adoption of the original ESL Ordinance in 1991. The appellant is still required to conform to the requirements of the Zoning Ordinance in effect at the time of approval of the current house.

- 2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The Appellant indicates that other properties in this area also contain palm trees. Therefore, the landscaping contained in this site is not substantially different and is in character with other properties in this area. Staff notes that other properties contain non-indigenous plants exceeding 20 feet in height may have been planted prior to the adoption of ESL Ordinance.

3. That special circumstances were not created by the owner or applicant:

The appellant indicates that prior to commencing the landscaping for her new home, she contacted the City of Scottsdale to inquire about landscape requirements. She indicates that City staff advised her that the only restriction was that there was to be no grass permitted in this area. Also, the landscape company that installed the palm trees was not aware of the requirements for non-indigenous plant materials in the ESL area.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:

The appellant has included a petition of other residents in the area that have no objection to the location of these palm trees. Several of the neighbors feel that the existing landscape and palm trees are attractive and suitable for this area.

STAFF CONTACT

Al Ward, Senior Planner
Report Author
Phone: 480-312-7067
E-mail: award@scottsdaleaz.gov

ATTACHMENTS

1. Application
2. Background Information
3. Notice of Violation
4. Justification
5. Project Narrative
6. Neighborhood Involvement
7. Context Aerial
- 7A. Aerial Close-up
8. Zoning Map
9. Photographs
10. Site Plan
11. Palm Tree Location Plan





**PROJECT APPLICATION
COMMUNITY DEVELOPMENT
7447 E. INDIAN SCHOOL ROAD
SCOTTSDALE, AZ 85251
(480) 312-7000 FAX (480) 312-7088**

Note:
Coordinator signature
required prior to
submittal.

<input type="checkbox"/> GEN'L PLAN AMENDMENT	<input type="checkbox"/> MASTER SIGN PROGRAM
<input type="checkbox"/> REZONING	<input type="checkbox"/> LOT SPLIT
<input type="checkbox"/> PRELIMINARY PLAT	<input checked="" type="checkbox"/> VARIANCE
<input type="checkbox"/> USE PERMIT	<input type="checkbox"/> ABANDONMENT
<input type="checkbox"/> DEVELOPMENT REVIEW	<input type="checkbox"/> OTHER

CA 9-BA-2003
Q.S. _____
PROJECT # 194-PA-2003

APPLICANT FILL OUT BELOW			
PROJECT NAME <u>Rafi Residence</u>		PROJECT LOCATION (ADDRESS) <u>10201 North 124th Street Scottsdale 85259</u>	
REQUEST <u>Vary from Sec. 6.1070.G.1.i of the zoning ordinance regarding palm trees in excess of 20 ft. height potential.</u>		CURRENT ZONING	
		PARCEL IN ACRES - NET. GROSS.	
		BOOK, MAP, PARCEL.	
Current OWNER Name <u>Tara and Michael Rafi</u>		Street Address <u>10201 North 124th St.</u>	
Company		City/State/Zip <u>Scottsdale, Az. 85259</u>	
		Phone	
		FAX	
DEVELOPER Name		Street Address	
Company		City/State/Zip	
		Phone	
		FAX	
ARCHITECT Name		Street Address	
Company		City/State/Zip	
		Phone	
		FAX	
ENGINEER Name		Street Address	
Company		City/State/Zip	
		Phone	
		FAX	
The owner shall designate either himself, or his architect, engineer, or agent as the coordinator for the project. This person will attend pre-application conferences, and will receive the agenda, recommendations and case reports. All contacts will be made for this project through the person named as coordinator below.			
APPLICANT/COORDINATOR NAME <u>Tara Rafi</u>		Street Address <u>See above</u>	
Company		City/State/Zip	
		Phone	
		FAX	
		e-mail	
			
OWNER'S SIGNATURE		APPLICANT'S SIGNATURE	
<u>TARA RAFI</u>		<u>Mike RAFI</u>	
PRINT NAME		PRINT NAME	
REPRESENTING		REPRESENTING	

YOUR STAFF COORDINATOR: <u>Al Ward</u>		ATTACHMENT #1	PRE APP DATE _____
THIS APPLICATION NEEDS A <input checked="" type="checkbox"/> NEW # OR <input type="checkbox"/> OLD			
<u>Walter Medina for Al Ward</u>			

Background Information
For Board of Adjustment



DATE _____
APPROVED AS PRESENTED _____
APPROVED W/STIP _____
DENIED _____

CASE # 9-BA-2003
PROJECT # 194 - PA - 2003
CONTINUED TO _____
HEARING DATE 11-5-03
CHAIRMAN VALE

APPLICANT TO FILL OUT THIS PORTION

VARIANCE REQUESTED AT (STREET ADDRESS WHERE VARIANCE IS REQUESTED)

10201 N 124th ST

TO BE COMPLETED BY YOUR COORDINATOR

ARTICLE AND SECTIONS OF ZONING ORDINANCE TO BE VARIED

ARTICLE VI. Section 6.1076.6(i)

SCOTTSDALE ZONING REQUIRES

no Non-Indigenous plants in the ESLO that have the potential of reaching over 20 ft in height.

APPLICANT'S REQUEST

allow 9 palm trees

AMOUNT OF VARIANCE

9 palms with the potential of reaching feet in height.

PROCEDURES OF THE BOARD OF ADJUSTMENT

There will be three notices of hearing: One on the property, two within 300 feet, and a notice will be published in the daily newspaper, at least 15 days before the hearing, and a notice will be mailed to adjacent property owners, within 300', at least 15 days before the hearing.

The Chairman shall determine what parties are available to represent the applicant, and they shall present the case. The staff will be heard, then those in favor or in opposition. After arguments have been heard, the party representing the owner will have an opportunity for rebuttal after which the Chairman may declare the questioning and argument closed. A vote will then be taken on the matter of approval or denial.

No variance shall be granted resulting in any changes in the uses permitted in any zoning classification or which constitute special privilege.

The application and all maps, plans and other accompanying data and material shall be available for public inspection during office hours at the office of the building official.

A notice of hearing will be mailed to the appl

For information regarding applications pleas

ATTACHMENT #2

9-BA-2003



Most Livable City
U.S. Conference of Mayors

ROBERT A. COHEN
CHIEF OF CODE ENFORCEMENT

CITY OF SCOTTSDALE
CITY AND NEIGHBORHOOD RESOURCES
7447 E. INDIAN SCHOOL RD., SUITE 300
SCOTTSDALE, AZ 85251

(480) 312-4088
(480) 312-2455 Fax

E-MAIL: rcohen@cityofscottsdale.az.us



Scottsdale

Neighborhood Resources

(480) 312-2546 • Fax - (480) 312-2455

7447 E. INDIAN SCHOOL ROAD, SUITE 300 • SCOTTSDALE, AZ 85251

57150
Robert Cohen (Supervisor)
Rob Henderson

NOTICE OF VIOLATION COMPLIANCE ORDER

PROPERTY OWNER:

Left at Door

ADDRESS:

10201 N 124th

DATE:

3/27/03

PLEASE BE ADVISED THAT AN INVESTIGATION HAS SHOWN THAT THIS PROPERTY IS IN VIOLATION OF THE CITY NUISANCE AND PROPERTY MAINTENANCE ORDINANCE OR CITY CODE IN THE FOLLOWING AREA(S):

Public Nuisances Ch 18 - 5	Preservation of Rural Residential Lifestyle Ch 18 - 11
Litter Control Ch 18 - 6	Solid Waste Management Ch 18 - 109
Vehicles and Watercraft Ch 18 - 7	Housing Code Ch 18 - 110
Buildings, Structures & Accessory Improvements Ch 18 - 8	Zoning Code Appendix B
Land Ch 18 - 9	Other
Preservation of Natural Desert Ch 18 - 10	

TO CORRECT THE VIOLATION(S):

The city's zoning ordinance
Does not allow any Palm tree
to be in the E.S.L. District which
this home is in. ^{Environment sensitive land}
Any Palm taller than 20 ft must be
removed. No Palm tree may grow
taller than 20 ft

PLEASE CORRECT THE VIOLATION(S) BY:

9-BA-2003

REINSPECTION DATE:

4-27-03

If you fail to correct the violation(s) within the time stated, you may be subject to a Civil Sanction of up to \$200.00 (Residential) or \$500.00 (Non-Residential) criminal charges may be filed in some cases.

Repeat violation(s) may be subject to higher fines.

CODE INSPECTOR

LARRY JONAS

PHONE

312-6265

OFFICE HOURS: 8:00 - 9:30 A.M.

ATTACHMENT #3

CD07084 (7/02)



Justification For
Requested Variance



CASE # _____

PROJECT # 194 - PA - 2003

APPLICANT TO FILL OUT THIS PORTION

Address Where Variance is Requested

10201 North 124th Street,
Scottsdale, Arizona 85259

JUSTIFICATION

Must Be Completed Fully By Applicant (All Four Justifications Must Be Satisfied)

1. That there are special circumstances applying to the property referred to in the application which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address.

The surrounding of the property include numerous other residences containing non-indigenous plants exceeding 20 feet in height, including some residences with more than 50 palm trees that are more than 20 feet high. The property is located at 124th St. / Gold dust and should be attractive in order →

2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district.

* See attached *

3. That special circumstances were not created by the owner or applicant.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.

1- The surrounding of the property include numerous other residences containing non-indigenous plants exceeding 20 feet in heights, including some residences with more than 50 palm trees that are way more than 20 feet high. The property is located at the corner of 124th Street and Gold dust and should be attractive in order to better the appearance of the entire neighborhood. The palm trees add to the attractiveness of the all properties. The letters sent from a lot of neighbors are evidences of all the happy and satisfied people about the palm trees. Also, the roof height in this particular residence, is 25 feet high which was the reason for the 6 out of 9 palm trees to exceed 20 feet in height in order to cause roof clearance. This was recommended by the landscaping company, who delivered, and installed the palm trees and have been in business for almost a half a century.

2- The authorization of this variance is necessary to preserve the privilege of other properties in the neighborhood to retain their numerous non-indigenous plants that exceed 20 feet in height. That were also installed after the E.S.L. ordinance went into effect. A lot of homeowners and builders and landscaping company are not aware of the E.S.L. ordinance and requirements, since this is residential area. It would not be fair to enforce non-indigenous plant ordinance against this owner/ applicant when it has not been enforced against so many other owners.

- pictures are included.

3 - The owner/applicant made diligent efforts to comply with city requirements before installing the palm trees. In September 2002, before starting the landscaping on the property, the owner/applicant called the City to inquire about any city requirements that must be observed with respect to landscaping projects. The City staff told the owner/applicant that since this was a residential project no submittals were required and stated that only the grass is prohibited. The city staff said nothing about E.S.L. area and non-indigenous plants exceeding 20 feet in height. The neighborhood's landscaping also did not indicate nor showed of any such rule. The landscaping company were not also aware of such law. These people have been in landscaping business for 50 years and have been installing non-indigenous plants all over the Scottsdale area.

4 - The palm trees will not be detrimental to persons residing in the area. They are attractive (as were said in the neighbors letters) and are similar to the hundreds of other palm trees in the immediate neighborhood.

Ever since these palm trees were installed, so many neighbors have stopped by or wrote letters to the owner/applicant to admire and appreciate the palm trees that have added a better look to the environment as well the community. They have seen the transition of this vacant lot to a nice residence. They all expressed their feelings of how these palm trees are part of the neighborhood and should not be removed.



- ☐ Rezoning
☐ Use Permit
☐ Development Review
☐ Master Sign Programs
☐ Text Amendment

☒ Other
Variance

Case # 9-BA-2003 194 -PA- 2017
 Project Name _____
 Location Scottsdale
 Applicant Tara Rafi
 Ordinance Section _____

SITE DETAILS

Proposed Zoning: _____
 Existing Zoning: _____
 Parcel Size: _____
 Height: _____

Parking Required: _____
 Parking Provided: _____
 # Of Buildings: _____
 Setbacks: N- _____ S- _____
 E- _____ W- _____

In the following space, please describe the project or the request

Applicant Seeks a Variance From Section 6.1070.6.1.i, which prohibit non-indigenous plants exceeding 20 feet in height, to allow the continued existence of 9 palm trees already installed at a cost of about \$20,000.00.
 See attached letter.

ISSUE/VIOLATION

- During the course of the construction of my residence, I learned about the various codes and restriction association with my land. These restrictions were NAS area, and G.L.O. which were new to me and required intensive research and modifications with engineering firm designing my home and the Planning Department from the City of Scottsdale. This process took several months to resolve and this delay cost me considerable time and money due to exceeding the time frame requirements from the bank for the construction loans.
- So, based on the aforementioned restrictions and requirements, prior to landscaping I specifically contacted the City of Scottsdale Planning Department to determine the specifications associated with landscaping in the City of Scottsdale. The only restriction/code that was mentioned was that there was to be no grass. I inquired about the need to submit plans to the city and was told due to this being a residential property it was not required.
- After working hard for 2.5 years I completed my home on a corner vacant lot in a developed residential neighborhood that had been sitting for over 20 years. Although this was a very long and tiring process I was very happy to have my new neighbors stopping by to congratulate me and thanking me for improving the neighborhood and removing an eyesore that had been in there for such a long time.
- Due to the previously mentioned conflicts with time, caused by all the codes and restrictions enforced by the City I was unable to secure a loan for the landscaping. This caused a year delay in the planning and landscaping of my home. At this time I had neighbors inquiring into why I don't have any landscaping.
- During the course of the year I had ample time to drive through my neighborhood and numerous other new developments and admire all the beautiful palm trees that were an integral part of their homes and our neighborhood.
- Once I was finally ready to begin landscaping I got numerous bids from various landscaping companies. I chose Whitfill Nursery, a licensed, bonded and insured landscaper in the Valley since 1946. They were to install nine beautiful palm trees in the enclosed area at my house.
- The preparation process for these trees took almost a month and required significant amount of hard work and labor to properly prepare the soil, dig the ground (up to 10' deep) so as to not damage the structure/foundation of the house. The palm trees were hand picked and trucked in and installed with cranes. Which also required a significant amount of intensive labor.
- Some of the palm trees that were hand picked by Whitfill Nursery were to be placed adjacent to the house. Due to the height of the roof line in the front of the house some of these beautiful palm trees had to be a certain height to eliminate any roof clearance issues.
- On March 27, 2003 I received a notice of violation due to the height of my palm trees by inspector Mr. Larry Jonas. I contacted the code inspection department for the City of Scottsdale and spoke to Mr. Robert Cohen. Later that week Mr. Robert Cohen and Mr. Larry

Jonas came to my house to discuss and explain the violation notice. This was the first time I heard any mention of E.S.L. area the restrictions in regards to non-indigenous plants and the heights of them.

- Mr. Robert Cohen advised me to apply for a variance with the City of Scottsdale. He indicated that my landscaping was beautiful and could see how much hard work had gone into it and how devastated I was.
- Additionally upon completion of my landscaping, I had numerous neighbors stopping by to comment on how wonderful the landscape looked and how it really improved the overall look of the community and added significant value to their properties. They were so impressed that such an eyesore could become such a wonderful sight to drive by. I have letters from various neighbors confirming this.
- Since receiving this notice I have driven through various neighborhoods and new developments and have found too many violations to even document. I have pictures and address of over 50 homes in my immediate neighborhood that have the same issue with non-indigenous plants/trees that are greater than 20' in height.

Mike & Joy Grabarec
10583 E. Mission Lane
Scottsdale, Arizona 85258

September 10, 2003

City of Scottsdale
Scottsdale, Arizona

To: Tara and Mike Rafi
10255 N. 124th Street
Scottsdale, Arizona 85230

We live in the area of the above mentioned address and have lived in the area for 17 years. Tara and Mike Rafi are new to this area and have built a beautiful home and are creating a beautiful landscape setting around their new home. In this landscape are some palm trees that the City of Scottsdale wants removed because of their height. I do business with the Rafis and frequently pass by their home with a great appreciation of the landscaping they have done there, especially the Palm Trees. We have no objection in any way to the height of these trees, nor do we want them removed. If smaller Palm Trees were planted and the trees grew to this height in question, would the City of Scottsdale make Tara and Mike Rafi to remove the trees then. These Palm Trees are beautiful to look at and are now a part of the neighborhood and definitely should not be removed.

Respectfully,

Mike & Joy Grabarec

Additional signatures below also have no objections to Mike & Tara Rafi's Palm Trees that have been planted into the landscaping around their new home and do not want the trees removed.

1. Melanie C. Behm 10581 E. Mission Ln
2. POST 76 E Mission Ln
3. Mike Kuenene 10576 Mission Ln
4. Nicholas Caputo 10580 E. Mission Ln
5. Louise Caputo 10580 E. Mission Lane
6. Mary + Mike Hughes 10255 N. 124th St.
7. Chad Ray 10300 N. 124th St.
8. Marcia Essig 10300 N. 124th St.
9. Debi + Greg Shaulick 12468 E. Gold Dust
10. _____

Tara & Mike Rafi
10201 N. 124th Street
Scottsdale, AZ 85259

September 12, 2003

I am a neighbor of the Rafi's and do not have any issues with the beautiful palm trees they have used to landscape their home. They have worked hard to improve the once vacant lot and have done a great job.

Name: HEIDI DENTON
Signature: [Signature]
Address: 11625 E. CAROL

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

Name: _____
Signature: _____
Address: _____

15 August 2003

City of Scottsdale
7447 E Indian School Road
Scottsdale, AZ 85251

Subject: Palm trees in the neighborhood

To Whom it May Concern:

I have watched with interest as the construction of the Rafi home on the corner of Golddust and 124th Street nears completion.

The recent addition of landscaping to the property has made a major improvement to the appearance of the property and enhances the neighborhood. Everything that has been done makes the home "fit in" very nicely. The palm trees in question do not detract from the overall appearance of the home, nor of the neighborhood. The height of the palm trees really makes the home look complete. Shorter palms would look out of place next to such a large home.

Anyone standing on the corner of Golddust and 124th Street can see that there are many palm trees in the neighborhood that exceed 20 feet in height. It makes no sense to require the removal of palm trees at the Rafi property when so many others in the same neighborhood have existing trees that exceed that height. Alternatively, all trees over 20 feet should be removed from the neighborhood... not a very practical solution.

The same neighbors who are complaining about the palm tree height on the Rafi property are the same ones who complained about the road we recently had paved along the front of our property and nearly prevented its completion... They need to get a life!

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck & Anne Blethen". The signature is fluid and cursive, with a large loop at the end.

Chuck & Anne Blethen
10239 North 125th Street
Scottsdale AZ 85259
480-391-1450
CBlethenA@aol.com

(P. E. HERMONSON

480-319-2545

12525 Coko Post 404

We really enjoy

The Med. Landscape

with the large

Palm trees we think

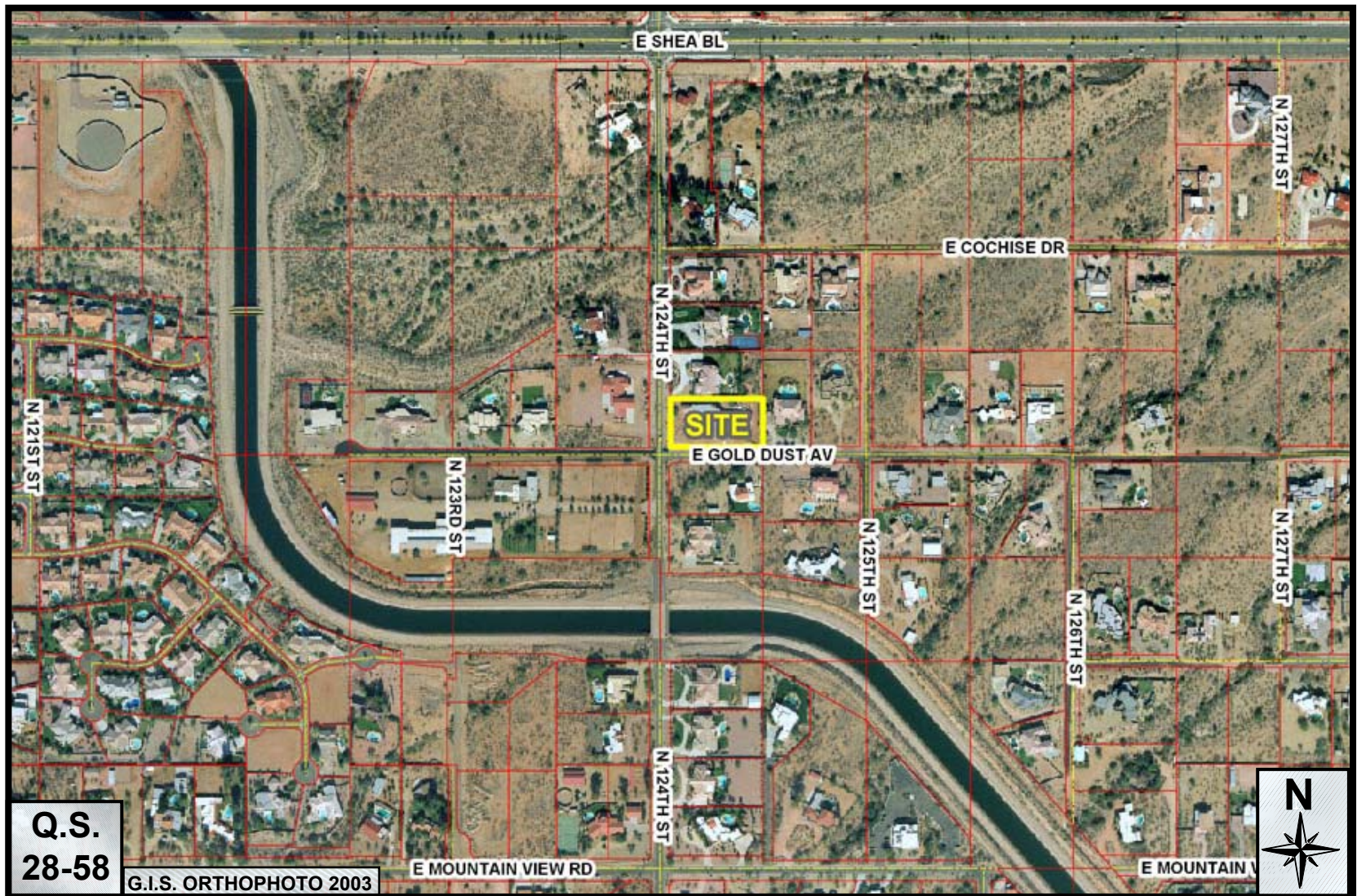
it adds to our

misphorbed.

B. J. Brown

4-10-03

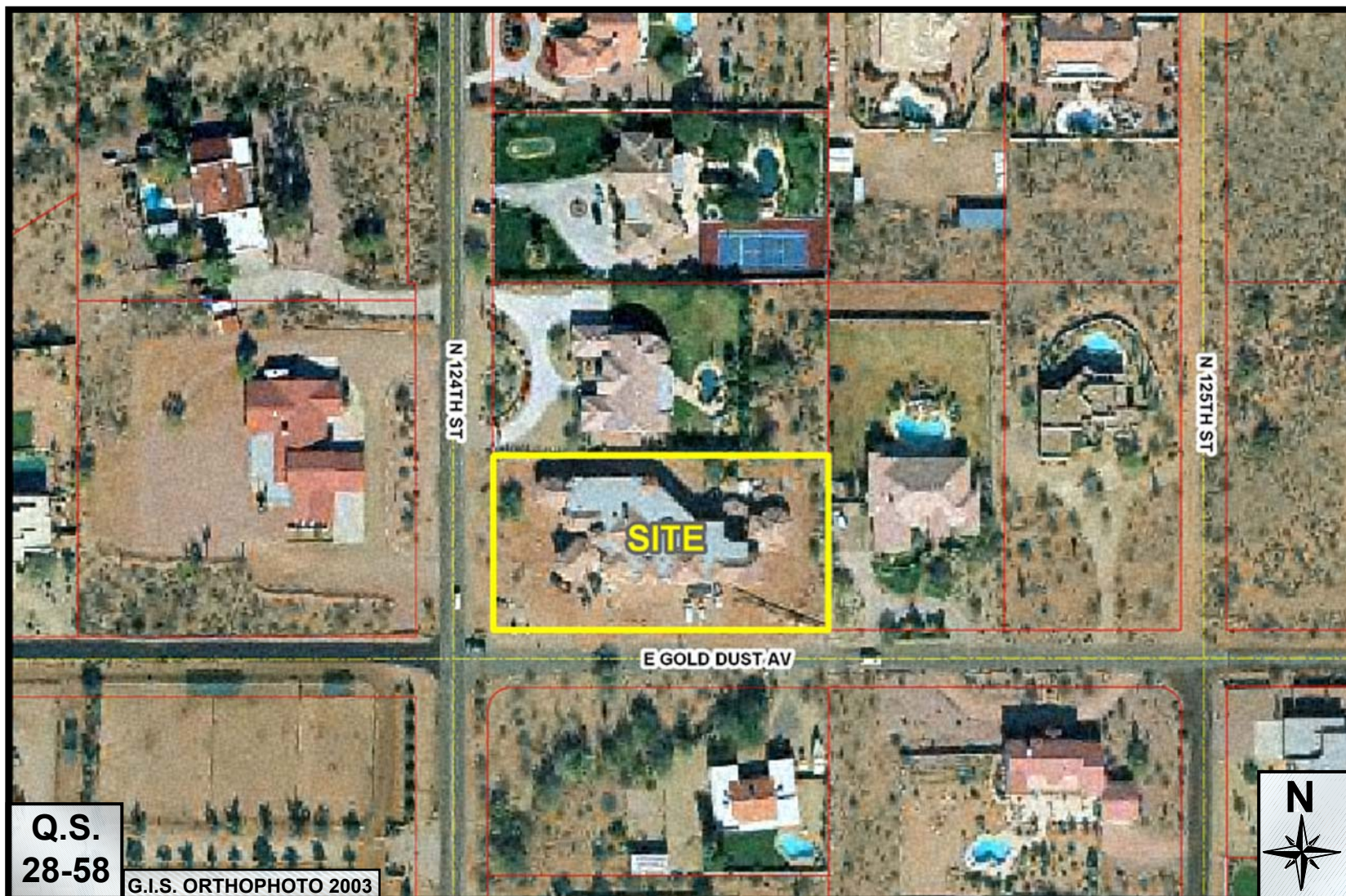
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Rafi Residence

9-BA-2003

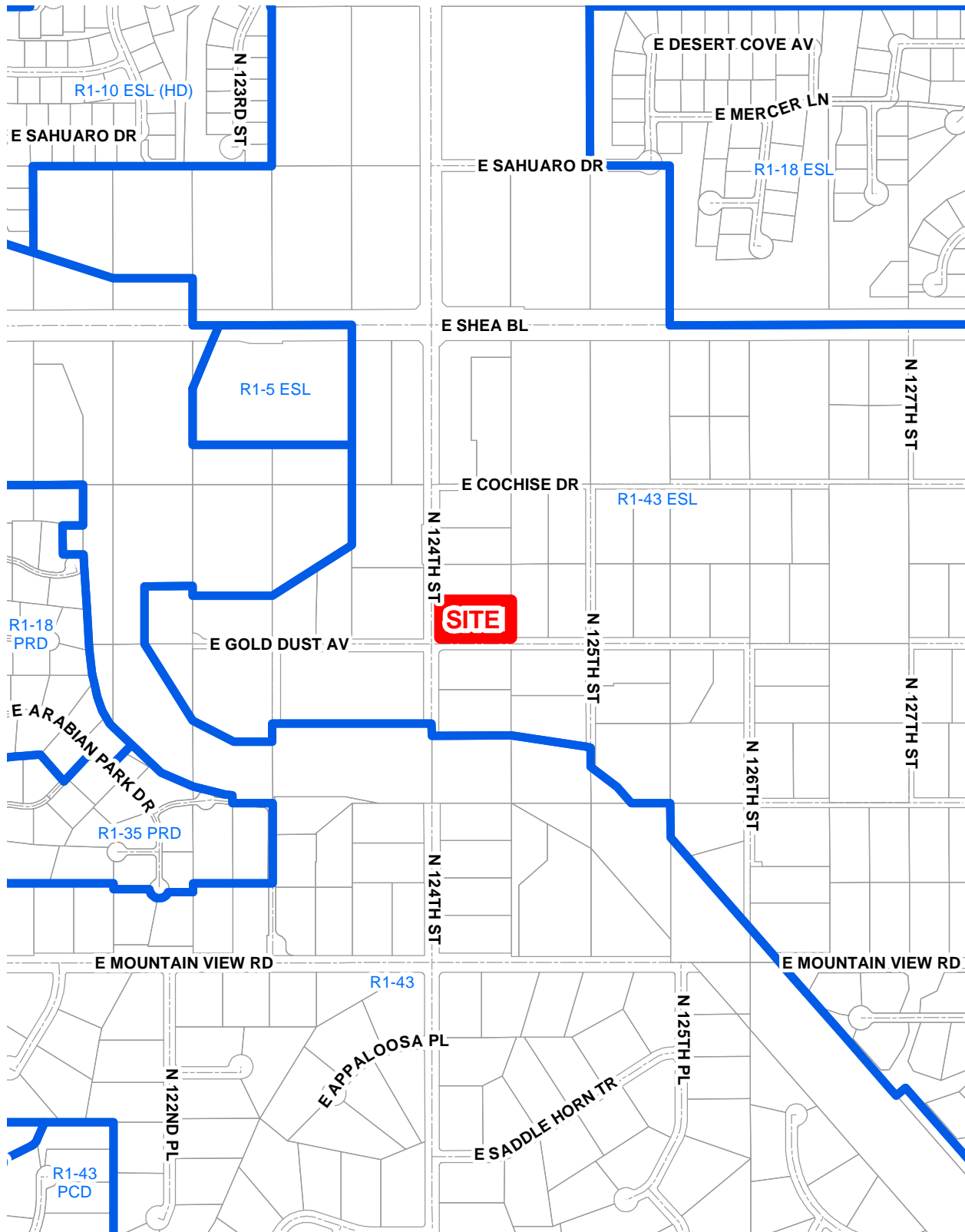
ATTACHMENT #7



Rafi Residence

9-BA-2003

ATTACHMENT #7A



9-BA-2003
ATTACHMENT #8



- **The pictures of the palm trees**





















